EXPLANATORY MEMORANDUM TO

THE CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY ORDER 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order establishes the mayoral Cambridgeshire and Peterborough Combined Authority (the CPCA/"the Combined Authority") across the local government areas of Cambridge, South Cambridgeshire, Huntingdonshire, Fenland, East Cambridgeshire, Cambridgeshire and Peterborough. It also provides for the governance arrangements of the Combined Authority, including that the area of the Combined Authority is to have a directly elected Mayor ("the Mayor"), and for the date of the first and subsequent elections to the role of Mayor and the term of office. Finally, the Order also provides for certain functions of the Combined Authority's constituent councils and certain public authorities to be exercised by the Combined Authority, and certain specified functions of the Combined Authority to be exercisable only by the Mayor of the Combined Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The report required by section 105B(9) of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") is attached to this Explanatory Memorandum.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 The instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of the 2009 Act provides that a combined authority may be established in relation to local government areas in England. The instrument does not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; of the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the provisions in the instrument relate to local government, which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. The primary purpose of the subject-matter of the instrument is not within schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); and the primary purpose of the subject-matter of the instrument is not within Schedule 7 to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

4.1 Part 6 of the 2009 Act, as amended by the Cities and Local Government Devolution Act 2016 ("the 2016 Act"), provides for the establishment of combined authorities which take on functions and responsibilities from the relevant councils and may also take on transport functions which are exercisable by an Integrated Transport Authority (ITA), where one exists and public functions exercisable by other public authorities. Combined authorities are corporate bodies with their own legal identity, which can provide a mechanism for exercising functions across a larger area than that of an individual local authority.

4.2 Under section 108 of the 2009 Act, where authorities wish to establish a new combined authority they may undertake a review of the exercise of statutory functions in relation to an area ("the review area") with a view to deciding whether to publish a scheme for the establishment of a combined authority under section 109 of the 2009 Act.

4.3 Under section 110 of the 2009 Act, before establishing a combined authority, the Secretary of State must carry out a public consultation unless:

- A scheme has been prepared and published under section 109 of the 2009 Act;
- the constituent councils carried out a public consultation in connection with the proposals contained in the scheme and provided the Secretary of State with a summary of the consultation responses; and
- the Secretary of State considers that no further consultation is necessary.

4.4 The Secretary of State may make an order establishing a combined authority only if:

- the Secretary of State considers that doing so is likely to improve the exercise of statutory functions in the area or areas to which the order relates;
- the constituent councils consent;
- any consultation required has been carried out.

4.5 The Secretary of State is also required to have regard to the scheme prepared by the authorities seeking to establish a combined authority and to the need:

- to reflect the identities and interests of local communities, and
- to secure effective and convenient local government.

4.6 Using powers under the 2009 Act, the first combined authority was established on 1 April 2011 – the Greater Manchester Combined Authority[1]. This has been followed by further combined authorities for Liverpool City Region[2], Sheffield City Region[3], West Yorkshire[4] and the North East[5], all established in April 2014. Combined Authorities for Tees Valley[6] and the West Midlands[7] have been established in 2016.

4.7 Section 107B of the 2009 Act, as inserted by the 2016 Act, provides that a position of a mayor for the area of a combined authority may be established if the local authorities within the area make a proposal to the Secretary of State or if the existing combined and local authorities within the area consent.

4.8 Parliamentary approval (through a resolution of each House) is required before the Secretary of State can make the Order establishing a combined authority or providing for the election of a mayor.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales as the relevant powers being exercised extend to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Andrew Percy, Parliamentary Under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of the Cambridgeshire and Peterborough Combined Authority Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Combined authorities may exercise specified functions across a number of local government areas. They provide a stable, efficient, and accountable form of governance both to underpin the local authorities' collaboration and to facilitate that partnership with business, particularly with the Local Enterprise Partnership for the area, which is essential for the effective promotion of economic growth.

7.2 The Government committed in its 2015 manifesto to "devolve powers and budgets to boost local growth in England….to large cities which choose to have elected mayors". The Government considers such devolution will boost economic growth, increase public service efficiency, improve Britain's productivity, and rebalance the economy, as the Government builds an economy that works for everyone. Devolution will provide local leaders with the levers they need to boost economic growth. It is local

[1] S.I. 2011/908
[2] S.I. 2014/865
[3] S.I. 2014/863
[4] S.I. 2014/864
[5] S.I. 2014/1012
[6] S.I. 2016/449
[7] S.I 2016/653

areas themselves who are often best placed to take decisions relating to the area about the use of public money and assets, support for business, infrastructure investment, and decisions on housing. With devolution, Government investment in economic development can be tailored directly to the individual challenges and opportunities particular places and communities face, and can effectively be augmented by private sector investment. Devolution will allow greater local integration of public service delivery, increasing public service efficiency and improving outcomes.

7.3 An East Anglia Devolution Deal was agreed between the constituent members of a proposed East Anglia Combined Authority and the Government at Budget in March 2016. Local leaders thereafter engaged with their communities and councils across East Anglia and sent proposals to Government instead for two deals, one for Cambridgeshire and Peterborough and one for Norfolk and Suffolk. On 18 November 2017 King's Lynn and West Norfolk Borough Council decided not to proceed with their proposed Norfolk and Suffolk Devolution Deal. The remaining Devolution Deal for Cambridgeshire and Peterborough provides that subject to the legislative and statutory processes, there will be a directly elected Mayor for the Cambridgeshire and Peterborough Combined Authority from May 2017. The elected Mayor will become the Chair of the Combined Authority.

7.4 The Government considers that an elected mayor ensures strong democratic accountability, provides a powerful advocate for the local area, and is pivotal to offering residents of an area that single point of accountability which is essential where wide ranging powers are devolved.

7.5 The Order is part of the legislation necessary to deliver the Cambridgeshire and Peterborough Devolution Deal. The Order establishes a combined authority for Cambridgeshire and Peterborough which comprises the local government areas of Cambridgeshire (within which are situated Cambridge City, East Cambridgeshire, Fenland , Huntingdonshire, and South Cambridgeshire) and Peterborough. As required by the 2009 Act, the seven councils have consented to the making of the Order. The Order laid in draft will, if approved by Parliament, be made pursuant to the provisions of the 2009 Act, as amended by the 2016 Act.

7.6 For the Order, the Secretary of State is satisfied that the statutory conditions provided for in the 2009 Act, as amended by the 2016 Act, have been met. These conditions included that no further consultation is required on the proposals; that the proposals are likely to improve the exercise of statutory functions in the Combined Authority area; that where proposals relate to local authority functions and constitutional changes they are appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. Specifically, this Order makes provision, as described in the following paragraphs of this document, to establish a mayoral combined authority (7.8 – 7.12), and confers on the Combined Authority powers, which cover: transport (7.13-14, 7.17), economic development and regeneration (7.15), and housing and planning (7.16).

7.7 The Order enables the Combined Authority to exercise a number of functions exercised by the constituent councils and other public authorities in relation to the Combined Authority area as reflected in the Devolution Deal. Provision in the 2009 Act enables functions to be conferred on the Combined Authority, to be exercisable by the Mayor individually, or by the Combined Authority (which is chaired by the Mayor).

7.8 The Order provides for the funding of the Combined Authority in relation to the functions conferred by the Order. It does this by requiring the constituent authorities to meet the costs of the Combined Authority reasonably attributable to its functions. The Order provides that the constituent councils may agree the respective proportions they will pay; in absence of this agreement, the proportions are to be calculated by reference to their respective shares of the total resident population, as estimated by the Statistics Board. The Order also recognises that certain Combined Authority transport functions may be funded through a levy; it is intended to make regulations under Section 74 of the Local Government Finance Act 1988 empowering the Combined Authority to issue such a levy if it so wishes.

7.9 The draft Devolution Deal provides that the new directly elected Mayor will have powers to create a non-statutory spatial framework for the Cambridgeshire and Peterborough Combined Authority area which will act as the framework for managing planning across the whole Cambridgeshire and Peterborough Combined Authority area.

7.10 It is proposed that this aspect of the deal will be implemented by the Mayor using the full General Power of Competence which this Order confers on the Combined Authority and the Mayor.

7.11 The details of the Combined Authority will reflect the local circumstances, and the joint-working and collaboration arrangements envisaged by the local authorities concerned. The Combined Authority will work seamlessly with the Local Enterprise Partnership for the area, the Greater Cambridge Greater Peterborough LEP. The Greater Cambridge Greater Peterborough LEP will appoint a non-constituent member to the Combined Authority. This member will be a non-voting member but may be given voting rights on certain issues should the members from the constituent councils of the Combined Authority resolve to grant these as set out in section 85(5) of the Local Transport Act 2008.

7.12 The constituent councils of the proposed Combined Authority have proposed that the first elections for a mayor for the area of the Combined Authority will be held in May 2017 with a first term of 4 years and 4 year terms thereafter. This is in keeping with the default position in the Cities and Local Government Devolution Act 2016 and is reflected in the Order. As a transitional arrangement the Combined Authority will nominate a chair until the directly elected mayor takes office. Once the Mayor is elected, the membership of the Combined Authority will be 8 and decisions of the Combined Authority will largely be taken by the majority subject to that majority including the vote of the Mayor.

7.13 To give effect to the contents of the deal to devolve powers to the proposed Cambridgeshire and Peterborough Combined Authority, the Order confers local authority functions for public transport on the proposed CPCA, to be exercised by the Mayor. It also enables the Mayor to produce and publish a Local Transport Plan for the CPCA area.

7.14 The Devolution Deal includes provisions for the Mayor to have responsibility for an identified Key Route Network of local authority roads that will be managed and maintained by the Combined Authority on behalf of the Mayor. The Order confers the related local authority functions under the Highways Act 1980, Road Traffic Regulation Act 1984, New Roads and Street Works Act 1991, Traffic Management Act 2004, and relevant regulations, onto the proposed CPCA, to be exercised by the

Mayor, concurrently with the highways authorities for the area (these being Cambridgeshire County Council and Peterborough City Council).

7.15 The powers and duties of the constituent councils relating to economic development and regeneration will be exercised concurrently with the proposed CPCA. Therefore, the Order confers the following local authority functions on the proposed Combined Authority, to be exercised concurrently with the constituent councils: the power under section 144 of the Local Government Act 1972 (the power to encourage visitors and provide conference and other facilities); the duties under sections 15ZA, 15ZB, 15ZC, 17 and 18A(1)(b) of the Education Act 1996 and the power under sections 514A and 560A of that Act (duties and powers related to the provision of education and training for persons over compulsory school age); and the duty under section 69 of the 2009 Act (duty to prepare an assessment of economic conditions). These functions will facilitate the proposed CPCA in its role to support economic development and regeneration across the area and are a basic requirement for combined authorities.

7.16 Functions set out in section 1 of the Localism Act 2011 (local authority's general power of competence) are to be conferred on the Mayor and the Combined Authority in accordance with the provisions in section 113D of the 2009 Act. The general power of competence means that a body can do anything, unless specifically prohibited, which an individual can do. The general power of competence will facilitate both the proposed CPCA and the Mayor to fulfil their roles and responsibilities, in particular in relation to increasing house building throughout the CPCA. This function will materially contribute to ensuring that local government in the combined area remains both convenient and effective, and that the interests and identities of local communities are recognised. The Order accordingly confers on the proposed CPCA a full power of competence under section 113D of the 2009 Act and on the Mayor such a power through section 107D of that Act.

7.17 The Order confers the functions of a Minister of the Crown contained in section 31 of the Local Government Act 2003 on the proposed CPCA, to be exercised by the Mayor. This is for the purpose of enabling the Mayor to make allocations of the devolved transport budget to the constituent transport authorities (Cambridgeshire County and Peterborough) as provided for in the deal. The Order attaches a condition to the use of that function which provides that the Mayor must have due regard to an allocation policy, or factors relevant to the allocation, as specifically provided for in the Order. This condition to the allocation of the Mayor's transport budget will ensure that the highways authorities are able to meet their statutory requirements for highways management and maintenance, something which remains a function of the local highways authorities and not the proposed CPCA.

8. Consultation outcome

8.1 The 7 local authorities of Cambridge and Peterborough, supported by the Greater Cambridge and Greater Peterborough LEP, led a consultation on the proposals contained in the governance review which they carried out on its governance arrangements and the scheme setting out proposals for the powers the constituent councils considered should be conferred on the Combined Authority. The consultation ran for 6 weeks from 8 July to 23 August 2016.

8.2 The consultation was undertaken via an Ipsos MORI telephone poll, an online survey, parish council responses to the consultation, and direct face-to-face sector and business engagement. The sampling approach that was taken by Ipsos MORI enabled

the achievement of 380 interviews in each local authority, with fixed quotas for gender, age, and work status. The open online consultation was run and analysed independently by Cambridgeshire County and Peterborough City councils and could be responded to via an open online survey on the council websites, by paper survey, or by email. The business engagement was conducted by the Local Enterprise Partnership and encompassed tailored events with business groups from Cambridge, Huntingdonshire, and Peterborough as well as a continuing dialogue with representative bodies. A focus was on issues such as Housing, Transport, and Skills provision. Community, voluntary and local public sector stakeholder engagement and meetings involved over 100 organisations and networks including the area's network of almost 250 local Town and Parish Councils. The consultation also included engagement with higher education institutions and the public sector, including the University of Cambridge, Anglian Ruskin University, and the Police and Crime Commissioner, the Clinical Commissioning Group and health organisations. The consultation was promoted via print, radio, and online press activity, social media and website promotion, and indirect contact via newsletters and e-mail.

8.3 In total, MORI's independent survey of residents received 2280 responses and the online survey received over 1500 responses. In their 7 September 2016 letter to the Secretary of State, the local authorities note that together with the business, community, voluntary and local public sector stakeholder and public sector engagement, 'more than 4,000 people had their say'.

8.4 Two parish councils out of the 8 who returned an official response voiced concerns that the summary document on the consultation website was insufficient and that the timing of the consultation was problematic as it took place during the holidays. This criticism of the process appears to be a minority view as it was not reflected in other comments and responses.

8.5 In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State reviewed the proposed Combined Authority's consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the proposed Combined Authority's consultation on the scheme was sufficient in terms of its length (6 weeks); the mechanisms used (telephone, online and hard copy, and face-to-face); the promotional activity (including print press, radio and online, social media and website promotion, newsletters, emails); stakeholder events; and the analysis undertaken. In reaching this view the Secretary of State has had regard to the extent of those consulted and is satisfied that the MORI poll ensured an adequate demographic spread of respondents. The Secretary of State has been provided with a summary of responses to the consultation, to which he has had regard in reaching his decision.

8.6 A Mayoral Cambridgeshire and Peterborough Combined Authority was supported by 61% of MORI respondents and with 23% opposed. The constituent councils' consultation summary highlights that 'overall the MORI telephone poll showed clear majorities amongst respondents in favour of the overall combination of funding, powers, governance, scrutiny and accountability proposals being put forward by Cambridgeshire and Peterborough'. 60% of MORI respondents supported their local council becoming part of a combined authority along with other councils in Cambridge and Peterborough chaired by a directly elected mayor, with 24% opposed. Online responses were more mixed with 55% supporting the principle of devolution, with 37% opposed. 44% supported the transfer of powers and funding to a Combined Authority for Cambridgeshire and Peterborough, with 47% opposed. Since the

numbers of the online survey, according to the analysis by Cambridgeshire and Peterborough councils, 'aren't representative of the population as a whole' as 'the results represent a 'self-selecting' sample', the somewhat more negative responses to the Mayoral Combined Authority model from the online survey are outweighed by the more positive responses to the Mayoral Combined Authority model by the MORI poll. Responses by the 8 parish councils who formally responded to the consultation were mixed.

8.7 Responses to the consultation indicated that the business community are in favour of the mayoral combined authority model. The Confederation of British Inustry stated that 'our members are clear that the government's devolution agenda can deliver real benefits for business, the economy and society if implemented effectively, with a long term focus on economic growth' and that 'the clear terms of the proposal are…welcomed, but it will be important to sustain visible, accessible leadership over the long term, executing the plan as outlined'. Some also expressed some caution. The trade union UNISON asserted that 'the overarching aims of devolution to a combined authority are, in principle, positives for UNISON members and the region', but also queried the added value of a Mayor and is wary that granting voting status to the Greater Cambridgeshire Greater Peterborough Local Enterprise Partnership would make the Combined Authority less democratic .

8.8 The University of Cambridge is 'supportive of devolution' and agreed 'with the broad priorities set out in the current Cambridgeshire and Peterborough devolution proposal, in particular around delivering substantial economic growth in a knowledge-based, low-carbon economy, providing new affordable housing, matching skills to business needs, improving transport links across the area and beyond'. The University also expressed some concerns: that granting voting status to the Greater Cambridge and Greater Peterborough LEP would make the Combined Authority less democratic; that the creation of a Mayoral Combined Authority creates additional bureaucratic layers, and concerning transparency in decision-making.

8.9 The consultation shows support for the creation of a Local Transport Plan. 76% of MORI respondents asserted that 'creating a transport plan for Cambridgeshire and Peterborough' was a decision better made 'locally'. 68% of online respondents supported the proposal for the Mayoral Combined Authority to create 'a transport plan for Cambridgeshire and Peterborough that helps to coordinate road, rail and bus services' while 17% were opposed. 84% of MORI respondents supported the devolution of powers and funding for decisions on road maintenance, and 68% supported the devolution of powers and funding for the annual £20m fund to improve local infrastructure, including road and rail improvements. Most online respondents favoured the conferral of transport powers, with 62% supporting mayoral combined authority decision-making on 'how to spend funding on infrastructure projects, such as road and rail improvements', in contrast to 24% opposed. Stakeholder comments also supported transport devolution. The Cambridgeshire and Peterborough Clinical Commissioning Group Chief Officer stated that 'the CCG supports the devolution programme's proposals to invest in transport infrastructure, jobs and housing and believes that this work will help deliver good quality local services for our residents'.

8.10 Consultation responses were broadly supportive of a devolved transport budget, with a majority of both MORI and online survey responses supporting local decision making on road maintenance spending. 84% of MORI respondents agreed that 'deciding how the budget is spent for maintaining roads in Cambridgeshire and Peterborough' was a

decision better made locally. Similarly, 65% of online respondents supported 'deciding how a budget is spent to maintain roads in Cambridgeshire and Peterborough' to be decided 'locally, by the Combined Authority and Mayor…, rather than by the Government in Westminster' with 19% against.

8.11 Proposals concerning economic growth and regeneration were broadly supported by consultation respondents. 62% of online respondents supported mayoral combined authority decision-making on 'how to spend funding on infrastructure projects, such as road and rail improvements', with 24% opposed. Stakeholder responses supported a focus on economic growth, with CBI stating that 'the proposed devolution agreement is rightly focused on economic growth'. However, the University of Cambridge highlighted that 'the devolution proposal should allow more thought and planning to achieve inclusive growth'.

8.12 The Secretary of State has taken the decision not to implement all of the proposals that formed part of the scheme, which was consulted on by the seven councils. In order to devolve the powers agreed in the Devolution Deal (regarding bus franchising, business rates, and skills) and implement the commitment at Autumn Statement to extend borrowing powers to cover the Combined Authority's new functions, the Government will seek Parliament's approval to further legislation.

8.13 The drafting of the Order has been an iterative process with Government and the proposed Combined Authority, and where decisions have been taken not to follow entirely the proposals in the scheme (as detailed above) the local area has been involved in such discussions.

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the Combined Authority area to support their implementation of the Devolution Deal.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 As regards impact on the public sector, the Combined Authority should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests require the Secretary of State to consider that establishing the Combined Authority is likely to improve the exercise of statutory functions in the areas to which an order relates and the Secretary of State is required, to have regard to the need to secure effective and convenient local government. As explained at paragraph 7.8, the Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This Order provides for the establishment of a mayoral combined authority and for functions to be devolved on that Combined Authority. The Combined Authority will be required, under the devolution agreements reached with Government, to put in

place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreement, including the new governance arrangements.

13. Contact

13.1 Rosemary Fletcher and Sabine Stieber at the Department for Communities and Local Government. Telephone: 0303 444 41831 and 0303 444 41198. Email: rosemary.fletcher@communities.gsi.gov.uk, sabine.stieber@communities.gsi.gov.uk can answer any queries regarding the instrument.